

Title 26. Taxation

Chapter II. Arkansas Tobacco Control, Department of Finance and Administration

Subchapter A. Generally

Part 200. Rules of the Arkansas Tobacco Control Board

Subpart 1. General

26 CAR § 200-101. Meeting of board.

(a) The Arkansas Tobacco Control Board shall meet at least two (2) times each year, time and place to be designated by the Chair of the Arkansas Tobacco Control Board in his or her official call of such meetings.

(b) However, additional regular, special, or emergency meetings may be held at the discretion of the chair or at the written request of two (2) members of the board.

26 CAR § 200-102. Quorum.

(a) A majority of the members of the Arkansas Tobacco Control Board shall constitute a quorum.

(b) If a quorum is not present at the time of such called meeting, same may be adjourned to a later date to be designated by the Chair of the Arkansas Tobacco Control Board.

Subpart 2. Permit Applications Generally

26 CAR § 200-201. Permit necessary for sale of cigarettes or other tobacco products.

No wholesaler, retailer, vendor, or other individual, partnership, corporation, or other entity shall sell, barter, give away, or otherwise distribute cigarettes, vapor products, alternative nicotine products, e-liquid products, or other tobacco products in the State of Arkansas without first obtaining the appropriate permit

or permits in accordance with the Arkansas Tobacco Products Tax Act of 1977, Arkansas Code § 26-57-201 et seq., and this part.

26 CAR § 200-202. Permit needed for each capacity.

Any individual, partnership, corporation, or other entity operating in more than one (1) capacity shall obtain a permit for each capacity.

26 CAR § 200-203. Current address.

(a) All permit holders must keep a current address or the current address of an agent for service of process on file with the Arkansas Tobacco Control.

(b) All correspondence and/or notices from the Arkansas Tobacco Control or Arkansas Tobacco Control Board shall be sent to the address on file with the Arkansas Tobacco Control.

(c) All permit holders are to notify the Arkansas Tobacco Control of any change in address and/or agent for service of process within thirty (30) days of said change.

26 CAR § 200-204. Forms for applications.

All applications for permits, new or renewal, shall be completed on forms provided by the Arkansas Tobacco Control.

26 CAR § 200-205. Application to be complete.

No application, new or renewal, will be accepted or acted upon by the Arkansas Tobacco Control Board unless it is complete and accompanied by the appropriate payment as established by Arkansas Code § 26-57-219.

26 CAR § 200-206. Replacement notice or transfer forms.

(a) All permit transfers and all use of a previous permit for thirty (30) days as specified under Arkansas Code §§ 26-57-214, 26-57-215, and 26-57-221 must be completed on forms provided by the Arkansas Tobacco Control.

(b) Such replacement notice or transfer forms must be submitted to the Arkansas Tobacco Control as a part of any new permit application.

26 CAR § 200-207. Posting of permits.

(a) All permit holders are required to publicly display their permit so that all persons visiting the premises may readily see the permit.

(b) Vending machine permit holders are required to post their cigarette vending machine permit conspicuously on the front of the vending machine.

26 CAR § 200-208. Records to be provided.

(a) All records relating to the purchase or sale of any tobacco product, including, but not limited to, all invoices and/or receipts relating to the sale or purchase of any tobacco products of any permit holder shall be open to inspection by the Director of Arkansas Tobacco Control and any investigator/agent of the Arkansas Tobacco Control.

(b) All such records shall be maintained by the permit holder for a period of at least three (3) years.

26 CAR § 200-209. Definition of invoice.

(a) The term "invoice", as used in Arkansas Code § 26-57-213, is defined as "documentation, contemporaneously made with the sale or purchase, sufficient to show an itemized list of the merchandise shipped, purchased or sold, with the quantity and prices charged".

(b) For wholesale sales, the invoice must contain the name or other identifying information of the seller and the purchaser.

(c) For purchases by a retailer, the invoice and/or sales receipt must contain the name or other identifying information of the seller.

(d) For sales by a retailer to consumers, the invoice need not contain the name or other identifying information of the purchaser.

Subpart 3. Wholesale Permit Applications

26 CAR § 200-301. Detailed information to be provided.

(a) Any application for a wholesale permit must be accompanied by a sworn affidavit showing whether the business is owned by an individual, partnership, corporation, or other entity.

(b)(1) The application shall state:

(A) The name, age, and address of the applicant, if an individual;

(B) The name, age, and address of each partner, if the applicant is a partnership; and

(C) The name, age, and address of each member of the board of directors or other governing body and each officer and the managing agent, if the applicant is:

(i) A partnership;

(ii) A corporation; or

(iii) An association.

(2) In addition, the application shall state the name and address of each person financially interested in the permitted business for which application is made, together with the nature of such interests, but if such applicant is a corporation, the applicant shall set forth only the name or names and address or addresses of all stockholders holding more than five percent (5%) interest in the permitted business.

(3) In addition, the same information may be required by the Director of Arkansas Tobacco Control of any manager, director, officer, or member retained by or having interests in the business.

(4) The application shall further provide a telephone number which must be listed in the name of the business seeking the application.

26 CAR § 200-302. Wholesaler-in-fact.

Each applicant shall attest that the permittee shall be a wholesaler-in-fact, proof of which shall consist of:

- (1) An established place of business;
- (2) The length of time for which said office and/or warehouse has been rented, leased, or owned; and
- (3) The federal employer's business identification number of each business.

26 CAR § 200-303. Business location.

(a) Each applicant must attach copies of the lease, rental, or ownership agreement of all offices and/or warehouses and a photo of all buildings to be used for the storage of inventory or files.

(b) No building may be used to store inventory or files which contains personal living quarters which is accessible from the area proposed to be used as a building location.

26 CAR § 200-304. Price list to be kept.

Each applicant must agree to maintain a list of prices for all tobacco products which will be sold, such price lists to be kept in the business office and made available to:

- (1) Each customer;
- (2) The Arkansas Tobacco Control Board;
- (3) The Director of Arkansas Tobacco Control; or
- (4) An investigator of the Arkansas Tobacco Control.

26 CAR § 200-305. Proof of financial responsibility.

(a) Each applicant shall furnish proof of financial responsibility in the form of a Dunn & Bradstreet report or such other financial statement or statements or document or documents acceptable to the Director of Arkansas Tobacco Control.

(b) The director may require a financial statement made by a certified public accountant.

26 CAR § 200-306. Change in ownership.

(a) In the event there is a change in ownership of twenty-five percent (25%) or more, the permit holder must resubmit the information required by this subpart.

(b) Said amended information shall be submitted to the Arkansas Tobacco Control within thirty (30) days of said change in ownership.

(c) If after review of the amended information, the Arkansas Tobacco Control Board determines that a permit would not have originally been granted to the legal entity had the original ownership and information been as reflected in the amended information, the board shall have the authority to revoke any permit, after a hearing.

(d) This section shall not apply to publicly traded corporations.

26 CAR § 200-307. Publication of application — New application.

(a) Upon tentative approval of a new wholesale application by the Arkansas Tobacco Control Board staff, the applicant shall advertise its intentions to seek a permit in a newspaper of state-wide circulation.

(b) Said notice shall be placed on two (2) occasions, seven (7) days apart, using the form supplied by the board.

(c) The date of the first publication shall be at least thirty (30) days prior to the meeting at which the board shall consider the application.

(d) The Director of Arkansas Tobacco Control shall establish the date of the board meeting at which the application shall be considered and the deadline for the filing of objections to the issuance of the permits.

(e) The applicant shall provide copies of said notices, along with proof of publication, to the director fifteen (15) days prior to the scheduled meeting.

Subpart 4. Retail Permit Holders

26 CAR § 200-401. Server awareness forms.

(a) It shall be the obligation of each retail permit holder to obtain from every employee, permittee, or owner who may or does sell cigarettes and tobacco products, upon commencement of such employment, a signed acknowledgement that he or she has read and understands the content of a form entitled "Tobacco Server Awareness Form", such form being provided at the time of issuance of any permit by the Director of Arkansas Tobacco Control.

(b) The Tobacco Server Awareness Form shall set forth pertinent rules and laws governing the sale of tobacco products and other related information as determined appropriate by the director.

(c) Executed server awareness forms or copies thereof shall be maintained at each permitted retail location and shall be available for inspection upon request by any agent of Arkansas Tobacco Control during normal business hours.

(d) Failure to have executed server awareness forms available for inspection shall be deemed a violation of this section.

26 CAR § 200-402. Prohibition on loose cigarette sales.

(a) The sale of individual cigarettes or "loosies" is prohibited.

(b) Individual cigarettes or "loosies" are defined as any cigarette not contained in its original, unopened pack.

26 CAR § 200-403. Online cigar sales.

(a) Pursuant to Arkansas Code § 26-57-203(27)(B), a retailer may sell cigars online to a buyer who is twenty-one (21) years of age or older, whether that buyer is inside or outside the State of Arkansas, when that retailer:

- (1) Has a physical presence in the State of Arkansas; and
- (2) Purchases cigars from a permitted wholesaler.

(b) "Cigar" or "cigars", as used in this subpart, means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, other than any roll of tobacco that is a cigarette, as defined by Arkansas Code § 26-57-260(4)(A) – (C).

(c) To "sell cigars online" means a sale of, an advertisement of, a solicitation to sell, a purchase of, or an offer to purchase cigars to consumers who submit orders all or in part online through the internet.

(d) "Sale" or "sell" has the same meaning as provided in Arkansas Code § 26-57-203(28)(A).

26 CAR § 200-404. Permit required.

Prior to making an online sale for delivery and prior to shipping cigars in connection with any online sales, a person must obtain and maintain a permit with the Arkansas Tobacco Control.

26 CAR § 200-405. Requirements for accepting order for delivery sale.

When accepting an order for a delivery of an online cigar sale from a buyer, the retailer must obtain the following information from the buyer placing the order:

- (1) A certification from the buyer documenting that the buyer:
 - (A) Is of legal age to purchase tobacco products in the State of Arkansas;
 - (B) Understands that providing false information may be a violation of law; and
 - (C) Understands that it is a violation of law to purchase cigars for subsequent resale or for delivery to persons who are under the legal age to purchase cigars;
- (2) The name of the person making the order;
- (3) The address where delivery is to occur;

- (4) The phone number of the person making the order;
- (5) The date of birth for the person making the order; and
- (6) The payment information.

26 CAR § 200-406. Requirements for shipping a delivery sale.

When shipping an order of an online sale from a buyer, the retailer must undertake the following prior to shipping:

- (1) The retailer must clearly mark the outside of the package of cigars to be shipped "Adult signature required";
- (2) The retailer must utilize a delivery service that imposes the following requirements:
 - (A) Someone twenty-one (21) years of age or older must sign for the delivery; and
 - (B) The person signing for the delivery must show valid government-issued identification that contains a photograph of the person signing for the delivery and indicates that the person signing for the delivery is twenty-one (21) years of age or older and resides at the delivery address; and
- (3) The retailer must provide delivery instructions that clearly indicate the requirements of this section and must declare that state law requires compliance with the requirements.

26 CAR § 200-407. Common carriers.

This subpart may not be construed as imposing liability upon any common carrier, or officers or employees of the common carrier, when acting within the scope of business of the common carrier and when otherwise acting in compliance with Arkansas law, including, but not limited to, the provisions of Arkansas Code § 26-57-230.

26 CAR § 200-408. Civil penalties.

The Arkansas Tobacco Control Board may levy a civil penalty in an amount not to exceed five thousand dollars (\$5,000) for each violation of this subpart, pursuant to Arkansas Code § 26-57-255, in addition to other civil penalties, suspensions, or revocations as authorized by Arkansas law.

26 CAR § 200-409. Collection of taxes.

A retailer selling cigars online pursuant to this subpart is responsible for the applicable sales taxes and excise taxes.

Subpart 5. Objections to the Issuance of Permits

26 CAR § 200-501. Written objections to be made.

(a) Pursuant to Arkansas Code § 26-57-256(a)(6), the Director of Arkansas Tobacco Control shall receive written objections to the issuance of new permits.

(b) All objections must state the nature of the relevant facts and must be received by the director on or prior to the deadline established by the director and published by the applicant pursuant to 26 CAR § 200-301.

26 CAR § 200-502. Public hearing to be held after receipt of three objections.

If the Director of Arkansas Tobacco Control receives the petition of three (3) interested parties alleging that facts relevant to the issuance of the permit exist and objecting to the issuance of the permit, the Arkansas Tobacco Control Board shall conduct a public hearing to receive and consider such relevant testimony and evidence.

26 CAR § 200-503. Applicant to publish notice of hearing.

(a) In the event that a public hearing is conducted by the Arkansas Tobacco Control Board, the Director of Arkansas Tobacco Control shall establish the time and date of the hearing and notify the applicant.

(b)(1) The applicant shall then publish notice of the hearing in a newspaper of state-wide circulation.

(2) Said notice shall be placed on two (2) occasions, seven (7) days apart, using the form supplied by the board.

(3) The date of the first publication shall be at least fifteen (15) days prior to the public meeting.

(c) The applicant shall provide copies of said notices, along with proof of publication, to the director prior to the scheduled meeting.

Subpart 6. Expiration of Permits

26 CAR § 200-601. Permits to expire on June 30.

(a) All permits and licenses shall expire on June 30 of each year.

(b) Only those applications received by this deadline shall be considered timely.

(c) The responsibility of timely renewal is placed entirely upon the permit holder, and shall not be transferred to any employee, firm, agent, or other third party, including the postal service.

(d) All permit holders who desire to retain their permits must apply for renewal on the forms provided by the Arkansas Tobacco Control Board.

26 CAR § 200-602. Expired permit.

(a) Each permit not renewed on or before June 30 shall expire.

(b) The holder of an expired permit must, after sixty (60) days (September 1), submit a new application and pay all late fees before receiving a new permit.

(c) The holder of the expired permit shall not be permitted to purchase, sell, barter, give away, or otherwise distribute cigarettes or other tobacco products in the State of Arkansas during the time he or she is not the holder of a valid, unexpired permit.

(d) However, this provision shall not bar the holder of an expired permit to return cigarettes or other tobacco products to the wholesaler.

Subpart 7. Fees

26 CAR § 200-701. Cash not accepted for payment of fees or permits.

(a) Payments for all fees or permits are to be made by:

- (1) Check;
- (2) Draft;
- (3) Money order; or
- (4) Credit card.

(b) No cash money will be accepted by the employees or members of the Arkansas Tobacco Control Board for any purpose.

26 CAR § 200-702. No payments accepted by agents.

(a) No agent of Arkansas Tobacco Control will take any payments in the field for new or renewal permits, fines, or any other matter.

(b) All payments are to be mailed or delivered to the Arkansas Tobacco Control Board as set out in 26 CAR § 200-701.

26 CAR § 200-703. Permit fee schedule.

The following is the schedule for all permit fees:

RETAIL CIGARETTE & TOBACCO PERMITS:

1. RC-RETAIL PERMIT	\$100.00
(Tobacco Products, Vapor Products, Alternative Nicotine Products, or E-Liquid Products)	

- 2. RV-RETAIL VAPOR PRODUCT AND E-LIQUID ONLY PERMIT \$50.00

**WHOLESALE & WHOLESALER'S
SALESPERSON PERMITS:**

- 1. WP-WHOLESALE PERMIT \$1,000.00
(Tobacco Products, Vapor Products,
Alternative Nicotine Products, or E-Liquid Products)
- 2. WS-WHOLESALE SALESPERSON PERMIT \$25.00

VENDOR & VENDING MACHINE PERMITS:

- 1. VS-VENDING MACHINE PERMIT (per machine) \$10.00
- 2. GV-VENDOR PERMIT \$100.00

**MANUFACTURER & MANUFACTURER'S
SALESPERSON PERMIT:**

- 1. MV-MANUFACTURER VAPOR PRODUCT & E-LIQUID PRODUCT
ONLY PERMIT \$500.00
- 2. MT-MANUFACTURER TOBACCO PRODUCTS & ALTERNATIVE NICOTINE PRODUCTS
ONLY PERMIT \$500.00

Manufacturers or importers who deal solely in cigars may submit a copy of their current federal tobacco import license or federal manufacturer's license to Arkansas Tobacco Control when applying for a Manufacturer Tobacco Products

and Alternative Nicotine Products Only Permit to receive the permit at no cost.

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| 3. MC-MANUFACTURER CIGARETTE ONLY PERMIT | \$500.00 |
| 4. MS-MANUFACTURER'S SALESEPERSON PERMIT | \$25.00 |

VAPOR AND E-LIQUID PRODUCT EXCLUSIVE PERMIT:

- | | |
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| 1. VAPOR PRODUCT AND E-LIQUID PRODUCT EXCLUSIVE PERMIT
(Manufacturer, Wholesaler, and Retailer) | \$1,000.00 |
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SPECIAL EVENT ONE TIME PERMIT:

- | | |
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| 1. SPECIAL EVENT ONE-TIME PERMIT | \$5.00 |
|----------------------------------|--------|

DUPLICATE PERMIT:

- | | |
|-----------------------------|--------|
| 1. DUPLICATE PERMIT REQUEST | \$5.00 |
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Subpart 8. Cigarette Vending Machines

26 CAR § 200-801. Location of vending machines.

(a) New or renewal applications for General Tobacco Products Vending Permit (vendor) license shall file with the Arkansas Tobacco Control Board a notification listing the number of vending machines operated and the physical location of each machine.

(b) In the event the location of a machine is changed, the vendor shall file with the board, within thirty (30) days of the change in location, a notification of the change in location, stating the former location of the machine and the new location.

(c) In the event of the addition of a machine not previously listed on the filing of the vendor, the vendor shall file a notification listing the location of such machine or machines within thirty (30) days of the addition.

26 CAR § 200-802. List of locations of vending machines upon issuance or renewal.

Upon the issuance or renewal of a cigarette vending machine permit, the permittee shall furnish the Director of Arkansas Tobacco Control a complete list of vending machine locations which list shall include the name of the business where the machine is operating and the physical address where the machine is located.

26 CAR § 200-803. Proof of bond.

Before a permittee may renew a cigarette vending machine permit, he or she shall provide the Director of Arkansas Tobacco Control with proof that the bond is still in force and effect with either a reinstatement notice or letter from the bond company or insurance company providing such coverage and stating the date of termination.

Subpart 9. Rebates and Concessions

26 CAR § 200-901. Definitions.

As used in this subpart:

(1) "Concession" has the same meaning as "rebate";

(2)(A) "Cost to wholesaler" means the basic cost of the cigarettes involved to the wholesaler plus the cost of doing business by the wholesaler as evidenced by the standards and methods of accounting regularly employed by him or her and must include, without limitation:

- (i) Labor costs, including salaries of executives and officers;
- (ii) Rent;

- (iii) Depreciation;
- (iv) Selling costs;
- (v) Maintenance of equipment;
- (vi) Delivery costs;
- (vii) All types of licenses;
- (viii) Taxes;
- (ix) Insurance; and
- (x) Advertising.

(B) The cost of doing business is presumed to be four percent (4%) of the basic cost of cigarettes to the wholesaler unless a cost of doing business application is submitted pursuant to 26 CAR § 200-1501; and

(3) "Rebate", pursuant to Arkansas Code § 4-75-702, means a payment made by a seller of cigarettes to a purchaser of cigarettes after the sale that serves as a discount or return of part of an amount previously given in payment by the purchaser of cigarettes.

26 CAR § 200-902. Unlawful rebate.

It is unlawful for any wholesaler, retailer, or salesperson to offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind or nature whatsoever in connection with the sale of cigarettes with intent to injure competitors or destroy or substantially lessen competition.

26 CAR § 200-903. Lawful rebate.

A wholesaler may give a rebate if the rebate is paid by check or electronic direct deposit and does not result in a sale at less than cost to the wholesaler according to Arkansas Code § 4-75-702(5)(A), less discounts that are received by the wholesaler from the manufacturer.

26 CAR § 200-904. Unlawful retailer inducement.

It is unlawful for any retailer to induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler.

26 CAR § 200-905. Penalties for failure to comply.

Any permit holder who violates the provisions of the Arkansas Tobacco Control Board rules shall be subjected to all sanctions set forth in the Arkansas Tobacco Products Tax Act of 1977, Arkansas Code § 26-57-201 et seq., and this part, which may include the suspension or revocation of any wholesaler's or retailer's permit or license.

Subpart 10. Hearing Procedures

26 CAR § 200-1001. Determination of need for hearing.

If upon a complaint filed or upon its own motion, the Arkansas Tobacco Control Board determines that a hearing is necessary, the board shall instruct the Director of Arkansas Tobacco Control and/or the board's legal counsel to issue a notice of hearing.

26 CAR § 200-1002. Arkansas Administrative Procedure Act.

All hearings shall be held in accordance with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

26 CAR § 200-1003. Notice of hearing.

(a) The notice of hearing shall be served upon the permit holder by mailing the same to the address on file with the Arkansas Tobacco Control.

(b) Service shall be by any means allowable by the Arkansas Rules of Civil Procedure as well as by first-class mail.

(c) The failure of a permit holder to receive the notice of hearing, if sent to the address on file with the Arkansas Tobacco Control, shall not constitute a failure to serve the permit holder.

(d)(1) The notice of hearing shall be mailed at least twenty (20) days prior to the hearing.

(2) This twenty-day requirement may be waived by the permit holder.

Subpart 11. Grounds for Revocation, Suspension, Nonrenewal of Permits, or Issuance of a Civil Penalty

26 CAR § 200-1101. Grounds for board action.

The following acts on the part of any permit holder shall be deemed by the Arkansas Tobacco Control Board to be grounds for revocation, suspension, nonrenewal of a license or permit, or issuance of a civil penalty:

(1) The violation of any of the provisions of this part;

(2) The violation of any provision of:

(A) The Arkansas Tobacco Products Tax Act of 1977, Arkansas Code § 26-57-201 et seq.;

(B) The Unfair Cigarette Sales Act, Arkansas Code § 4-75-701 et seq.;

(C)(i) Arkansas Code § 5-27-227 (providing minors with tobacco products and cigarette papers or placement of tobacco vending machines).

(ii) The grounds for the revocation, suspension, nonrenewal, or issuance of a civil penalty for violation of Arkansas Code § 5-27-227(a) are more fully set out in Arkansas Code § 26-57-257(p);

(D) Any federal law or regulation in connection with the sale or distribution of cigarettes or tobacco products; or

(E) Any Arkansas law or rule in connection with the sale or distribution of cigarettes or tobacco products; and

(3) The assistance of another individual to violate any of the provisions of rules of the board or to violate any provision of:

(A) The Arkansas Tobacco Products Tax Act of 1977, Arkansas Code § 26-57-201 et seq.;

(B) The Unfair Cigarette Sales Act, Arkansas Code § 4-75-701 et seq.;

(C) Any federal law or regulation in connection with the sale or distribution of cigarettes or tobacco products; or

(D) Any Arkansas law or rule in connection with the sale or distribution of cigarettes or tobacco products.

Subpart 12. Enforcement of Arkansas Code § 5-27-227

26 CAR § 200-1201. Offenses by nonpermittee.

If a complaint alleging the violation of Arkansas Code § 5-27-227 is received by the Arkansas Tobacco Control, and the Arkansas Tobacco Control, at its discretion, determines that there are reasonable grounds to believe that a violation has occurred, the Arkansas Tobacco Control may direct that a notice of hearing be issued to the respondent for the appropriate allegation.

26 CAR § 200-1202. Information to be given to the board — Timeliness of information.

(a) In order for the Arkansas Tobacco Control to comply with notice requirements of Arkansas law, alleged violations of Arkansas Code § 5-27-227 reported to the Arkansas Tobacco Control must contain, at a minimum, the following:

- (1) The date and time of the alleged violation; and
- (2) Either the name of the person making such alleged sale or information reasonably necessary to determine the location in the store of the person allegedly making the sale.

(b)(1) Such information should include, where appropriate:

- (A) The cash register number;
- (B) Physical location of the sale in the store; and
- (C) If possible, the lane or aisle number.

(2) If a cash register receipt was given for the sale, it should be included with the information.

(c)(1) Notice of the alleged violation must be given to the alleged violator within ten (10) days of the alleged event.

(2) Therefore, information as to an alleged violation should be given to the Arkansas Tobacco Control Board as soon as possible.

26 CAR § 200-1203. Training of individuals or groups conducting compliance checks.

Use of Arkansas Tobacco Control Board forms:

(1)(A) In order to ensure compliance with Arkansas law, all individuals or groups authorized to conduct compliance checks under Arkansas Code § 5-27-227(d)(5) (excluding individuals and groups authorized to conduct compliance checks pursuant to Arkansas Code § 5-27-227(d)(1) – (4)), shall be trained by an authorized agent of the board at a course or seminar approved by the board.

(B) The Director of Arkansas Tobacco Control shall, from time to time, as is necessary, schedule courses or seminars to instruct those groups or individuals interested in conducting compliance checks;

(2) All individuals or groups authorized to conduct compliance checks under Arkansas Code § 5-27-227(d)(5) (excluding individuals and groups authorized to conduct compliance checks pursuant to Arkansas Code § 5-27-227(d)(1) – (4)), shall use the forms approved by the board to compile and report information on compliance checks; and

(3)(A) Notwithstanding any provision of this part, any retail permit holder is entitled to an affirmative defense, and no penalty will be imposed upon the retail permit holder if the retail permit holder can establish that, prior to the

date of the violation, the retail permit holder or his or her agent or employee furnishing the tobacco in any form or cigarette papers reasonably had previously relied upon proof of age which identified the person receiving the tobacco in any form or cigarette papers as being eighteen (18) years of age or older.

(B) "Proof of age" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth and includes, without being limited to a:

- (i) Passport;
- (ii) Military identification card; or
- (iii) Driver's license.

Subpart 13. Establishment of a Special Fund

26 CAR § 200-1301. Maintaining adequate funding.

(a) In order to maintain adequate funding within the Arkansas Tobacco Control Board to provide all necessary copying and miscellaneous legal costs, and to ensure the maintenance of rule books in sufficient quantities within existing budgetary constraints, it is necessary that a fee be charged for rule books.

(b) Further, it is necessary that a board fund be established into which the fees charged for the books will be deposited.

(c) These revenues may be used for the purpose of printing additional books, official publications, documents, pleadings, or postage costs, as well as for paying any necessary filing fees or costs on any court appeals filed by the board.

26 CAR § 200-1302. Charge for rule book.

A fee of ten dollars (\$10.00) shall be charged for each rule book, and such revenues shall be deposited in the Special Tobacco Control Board Fund, to be

established pursuant to this part, and shall be used for the purposes stated in 26 CAR § 200-1301, as such payment is deemed necessary and proper by the Director of Arkansas Tobacco Control.

26 CAR § 200-1303. Charge for copies made.

(a) The Arkansas Tobacco Control Board shall be entitled to recover forty cents (40¢) per page for each copy of any files, records, or transcripts.

(b) Any copies of board files, records, or transcripts shall be paid for at the rates noted above.

(c) All moneys received by the board pursuant to the above provisions shall be deposited to the Special Tobacco Control Board Fund.

Subpart 14. Payment of Fines

26 CAR § 200-1401. Due date for payment of fines (accepted offers of settlement).

Fines issued to and accepted by a permit holder or other person or entity shall be paid no later than thirty (30) days from the date the Arkansas Tobacco Control Board approves said acceptance unless other written arrangements are made and approved by the Director of Arkansas Tobacco Control.

26 CAR § 200-1402. Due date for payment of fines (hearings or defaults).

(a) Fines issued to a permit holder or other person or entity after a hearing or a finding that said permit holder or other person or entity is in default, shall be paid no later than fifteen (15) days after said permit holder's or other person or entity's time for filing an appeal to circuit court has run.

(b) Due date for payment of fines after an appeal is taken is thirty (30) days from the date of entry of a final order.

26 CAR § 200-1403. Penalty for nonpayment (permit holders).

If a permit holder fails to pay their fine when due and has either failed to file a timely appeal to circuit court or more than thirty (30) days has passed since the entry of a final order on appeal, the Director of Arkansas Tobacco Control may immediately and without further notice temporarily suspend the permit holder's retail, vending, or wholesale cigarette and tobacco permit until a hearing is held to show cause why the permit holder should not:

- (1) Be found in contempt of the Arkansas Tobacco Control Board's orders and their suspension continued for a period of time determined by the board;
- (2) Be fined up to one thousand dollars (\$1,000);
- (3) Have their permit suspended or revoked; or
- (4) Any combination thereof.

26 CAR § 200-1404. Penalty for nonpayment (nonpermit holders).

If a person or entity other than a permit holder fails to pay their fine when due and has either failed to file a timely appeal to circuit court or more than thirty (30) days has passed since the entry of a final order on appeal, the Director of Arkansas Tobacco Control may immediately and without further notice:

- (1) Confiscate or seal any and all cigarettes and other tobacco products on said person or entity's business premises until a hearing is held to show cause why the person or entity should not be found in contempt of the board's orders and their confiscated inventory be destroyed;
- (2) Be fined up to one thousand dollars (\$1,000); or
- (3) Any combination thereof.

Subpart 15. Unfair Cigarette Sales

26 CAR § 200-1501. Wholesalers' cost of doing business.

(a) Cost of doing business.

(1) The cost of doing business is presumed to be four percent (4%) of the basic cost of cigarettes to the wholesaler unless a different cost of doing business is determined by a cost study conducted by the Director of Arkansas Tobacco Control.

(2)(A) Unless approved for a lower cost of doing business or meeting competition, as provided by this part and the Unfair Cigarette Sales Act, Arkansas Code § 4-75-701 et seq., or falling within the statutory exceptions in Arkansas Code § 4-75-703, the wholesaler may not advertise, offer to sell, or sell cigarettes to a retailer at less than the basic cost of the cigarettes involved to the wholesaler, plus the wholesaler's statutorily presumed four percent (4%) cost of doing business, if the wholesaler does so with the intent to injure competitors or destroy or substantially lessen competition.

(B) Evidence of advertisement, offering to sell, or sale of cigarettes at a price less than the cost of the cigarettes involved to the wholesaler, plus the wholesaler's cost of doing business, shall be prima facie evidence of intent to injure competitors and destroy or substantially lessen competition.

(b) When to file application. A wholesaler who wishes to advertise, offer for sale, or sell at less than four percent (4%) presumed cost of doing business shall submit an application to the director, for approval by the Arkansas Tobacco Control Board:

- (1) At least forty-five (45) days before the desired effective date; or
- (2) Other times as may be authorized by the director.

(c) Application to contain certain information.

(1) An application for permission to advertise, offer for sale, or sell at less than four percent (4%) presumed cost of doing business shall contain:

(A) A summary of expenses associated with the business, on a form to be provided by the director, with the cigarette portion of the business separately listed, and using the information set forth in the most recently filed federal income tax return;

(B) The certificate statement signed by the owner, partner, or a responsible corporate officer indicating that the summary of expenses as contained on the form required by subdivision (c)(1)(A) of this section is true and accurate;

(C) A statement signed by a certified public accountant indicating the CPA has reviewed the information provided and that it accurately reflects the information shown in all material respects;

(D) A copy of the most recently filed federal income tax return form with all associated schedules and attachments; and

(E) Any other information requested by the director, as may be necessary to review the application.

(2) If the wholesaler engages the services of an independent accounting firm, the statement provided under subdivision (c)(1)(C) of this section shall be signed by a CPA associated with that firm.

(d) Review and determination.

(1) The director shall review and evaluate the information provided by the wholesaler and shall make a recommendation to the board regarding the approval of the wholesaler's application to sell at less than the statutorily presumed cost of doing business.

(2) The director shall inform the applicant of his or her recommendation prior to submitting the application, and the director's recommendation, to the board.

(3) The director shall notify the wholesaler of the final action on the application and, if approved, the specified percentage cost of doing business approved shall remain in effect until the next application and approval or until withdrawn by the director.

(4) If a person with permission to sell at less than the statutorily presumed cost of doing business fails to submit a new application by May 15, then the permission previously given shall be automatically withdrawn on July 1.

(e) Meeting competition.

(1) A wholesaler may advertise, offer for sale, or sell at a lower cost of doing business while meeting competition.

(2) The following criteria shall be considered when meeting competition:

(A) The competitor shall have:

(i) Been approved for a lower cost of doing business in accordance with this section; or

(ii) Sold, or made a definite bona fide advertisement or offer to sell cigarettes at a lower price to a specific retailer; and

(B) A written offer to sell is considered prima facie evidence of competition at a particular retailer.

(f) **Remedy.** Notwithstanding approval by the director and the board of a lower cost of doing business, an affected party who claims to be injured may pursue remedies in a court of competent jurisdiction as provided by Arkansas Code § 4-75-713.

26 CAR § 200-1502. Retailers' cost of doing business.

(a) Cost of doing business.

(1) The cost of doing business is presumed to be seven and one-half percent (7.5%) of the basic cost of cigarettes to the retailer, unless a different cost of doing business is determined by a cost study conducted by the Director of Arkansas Tobacco Control.

(2)(A) Unless approved for a lower cost of doing business or meeting competition, as provided by this section and the Unfair Cigarette Sales Act, Arkansas Code § 4-75-701 et seq., or falling within the statutory exceptions in Arkansas Code § 4-75-703, the retailer may not advertise, offer to sell, or sell cigarettes to a retail consumer at less than the basic cost of the cigarettes involved to the retailer plus the retailer's statutorily presumed seven and one-half percent (7.5%) presumed cost of doing business, if the retailer does so with the intent to injure competitors or destroy or substantially lessen competition.

(B) Evidence of advertisement, offering to sell, or sale of cigarettes at a price less than the cost of the cigarettes involved to the retailer, plus the retailer's cost of doing business, shall be prima facie evidence of intent to injure competitors and destroy or substantially lessen competition.

(b) **When to file application.** A retailer who wishes to advertise, offer for sale, or sell at less than seven and one-half percent (7.5%) presumed cost of doing business shall submit an application to the director for approval by the Arkansas Tobacco Control Board:

- (1) At least forty-five (45) days before the desired effective date; or
- (2) Other times as may be authorized by the director.

(c) **Application to contain certain information.**

(1) An application for permission to advertise, offer for sale, or sell at less than seven and one-half percent (7.5%) presumed cost of doing business shall contain:

(A) A summary of expenses associated with the business, on a form to be provided by the director, with the cigarette portion of the business separately listed, and using the information set forth in the most recently filed federal income tax return;

(B) The certificate statement signed by the owner, partner, or a responsible corporate officer indicating that the summary of expenses as contained on the form required by subdivision (c)(1)(A) of this section is true and accurate;

(C) A statement signed by a certified public accountant indicating the CPA has reviewed the information provided and that it accurately reflects the information shown in all material respects;

(D) A copy of the most recently filed federal income tax return form with all associated schedules and attachments; and

(E) Any other information requested by the director, as may be necessary to review the application.

(2) If the retailer engages the services of an independent accounting firm, the statement provided under subdivision (c)(1)(C) of this section shall be signed by a CPA associated with that firm.

(d) Review and determination.

(1) The director shall review and evaluate the information provided by the retailer and shall make a recommendation to the board regarding the approval of the retailer's application to sell at less than the statutorily presumed cost of doing business.

(2) The director shall inform the applicant of his or her recommendation prior to submitting the application, and the director's recommendation, to the board.

(3) The director shall notify the retailer of the final action on the application and, if approved, the specified percentage cost of doing business approved shall remain in effect until the next application and approval or until withdrawn by the director.

(4) If a person with permission to sell at less than the statutorily presumed cost of doing business fails to submit a new application by May 15, then the permission previously given shall be automatically withdrawn on July 1.

(e) Meeting competition.

(1) A retailer who has not been approved for a lower cost of doing business may advertise, offer for sale, or sell at a lower cost while meeting competition.

(2)(A) The following criteria shall be considered when meeting competition.

(B)(i) The competitor shall have:

(a) Been approved for a lower cost of doing business in accordance with this section; or

(b) Sold, or made a definite bona fide advertisement or offer to sell, cigarettes at a lower price to a specific individual; and

(ii) A written offer to sell is considered prima facie evidence of competition to a particular individual.

(f) **Remedy.** Notwithstanding approval by the director and the board of a lower cost of doing business, an affected party who claims to be injured may pursue remedies in a court of competent jurisdiction as provided by Arkansas Code § 4-75-713.

26 CAR § 200-1503. Coupons and manufacturer promotional allowances.

(a) Application of manufacturer promotional allowances.

(1) For purposes of Arkansas Code § 4-75-709, a manufacturer promotional allowance for a particular brand style of cigarette may only be passed on to the purchaser by the wholesaler or retailer in a transaction involving that particular brand style of cigarette.

(2) A wholesaler or retailer may not apply manufacturer promotional allowances in a sale involving a brand style of cigarette other than the particular brand style of cigarette for which that manufacturer promotional allowance was given by the manufacturer.

(b) No accrual of manufacturer promotional allowances.

(1) For purposes of Arkansas Code § 4-75-709, manufacturer promotional allowances may not be accrued and applied in the aggregate, but must be applied only on the same gross or pro rata basis as they are provided by the manufacturer.

(2) For example, if a manufacturer provides a manufacturer promotional allowance of twenty cents (20¢) per carton of a particular brand style, that manufacturer promotional allowance may only be passed on to the purchaser by the wholesaler at the rate of twenty cents (20¢) per carton, or a pro rata portion thereof per pack from the carton, for the particular brand style of cigarette for which it is provided by the manufacturer.

Subpart 16. Advisory Opinions

26 CAR § 200-1601. Issuance of advisory opinions.

(a) To the extent any wholesaler or retailer has questions concerning the price at which the wholesaler or retailer may legally sell cigarettes under the Unfair Cigarette Sales Act, Arkansas Code § 4-75-701 et seq., or whether an act constitutes an unlawful rebate or an unlawful concession, the wholesaler or retailer may submit a written request to the Director of Arkansas Tobacco Control for an advisory opinion.

(b) The written request should include a recitation of all facts relevant to the subject matter of the inquiry.

(c) The director shall present the written request to the Arkansas Tobacco Control Board within forty-five (45) days of receipt thereof, unless good cause requires a longer period, along with the director's proposed response to the request.

(d) The board shall approve, modify, or reject the director's proposed response within thirty (30) days of receipt thereof from the director, unless good cause requires a longer period.

(e) The board may also issue advisory opinions on its own initiative if it determines that the subject of the opinion is of such public concern that an advisory opinion would benefit the public.

(f) Neither the director nor the staff of the board shall provide oral or written advisory opinions concerning the price at which the wholesaler or retailer may legally sell cigarettes under the Unfair Cigarette Sales Act, Arkansas Code § 4-75-701 et seq., or whether an act constitutes an unlawful rebate or an unlawful concession in any manner other than that authorized by this part.

26 CAR § 200-1602. Advisory opinions approved by the board.

(a) No advisory opinion prepared under this subpart by the Director of Arkansas Tobacco Control, the Arkansas Tobacco Control Board's staff or

counsel, whether in draft or final form, shall be valid, official, or of any effect unless and until it has been approved by a vote of a majority of a quorum of the board.

(b) The director's response to a request for an advisory opinion shall be prepared by the director in consultation with the board's legal counsel, as appropriate, and presented by the director to the board for consideration.

26 CAR § 200-1603. Form of advisory opinions.

(a) Advisory opinions shall set forth the facts upon which the opinion is based, and shall address only whether an intended, future course of conduct violates any law or rule within the jurisdiction of the Arkansas Tobacco Control Board.

(b) The opinion shall interpret the applicable law or rule as applied to the facts presented and shall not address the legality of any past or present conduct.

(c) The identity of the requesting person shall be disclosed in the opinion.

(d)(1) If the individual facts and circumstances provided are insufficient in detail to enable the board to render an advisory opinion, the board shall request supplementary information from the requesting individual to enable the board to render such opinion.

(2) If such supplementary information is still insufficient or is not provided, the board shall so state and shall not render an advisory opinion based upon what it considers to be insufficient detail.

26 CAR § 200-1604. Records.

(a) The Director of Arkansas Tobacco Control shall provide a copy of each advisory opinion to the requesting party and to each member of the Arkansas Tobacco Control Board.

(b) The director shall keep the original opinion in a permanent file maintained for that purpose, along with a copy of the original request for the

advisory opinion and any information or documents provided to the board by the requesting party.

(c) Copies of all documents considered by the board, the staff, or counsel in the drafting or rendering of an advisory opinion shall be retained by the director and kept in the file for that particular advisory opinion.

(d) All files maintained for advisory opinions issued by the board shall be made available for public inspection upon request, subject to the protections provided by Arkansas Code § 25-19-105(b)(9)(A) of the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.

26 CAR § 200-1605. Effect of opinions.

(a) The Arkansas Tobacco Control Board may reconsider, withdraw, or amend prior opinions upon request of a citizen, or on its own motion, by a majority vote of a quorum of the board.

(b) In such event, written notice of the change shall be mailed to the original requesting party at the last address for that party provided to the board.

Subpart 17. Confiscation Report and Rules

26 CAR § 200-1701. Tobacco forfeiture.

(a) For purposes of forfeiture tracking, each law enforcement agency seizing property pursuant to Arkansas Code § 26-57-247 shall be assigned a unique numeric identifier.

(b) Form ATC-C10 is hereby adopted as the standardized confiscation report form to be used by all law enforcement agencies when forfeitable property is confiscated pursuant to Arkansas Code § 26-57-247 as follows:

**ARKANSAS TOBACCO CONTROL
CONFISCATION REPORT**

Report No. _____
(assigned by ATC)

Date & Time of seizure: _____
seizure: _____

County of _____

Name & Address of persons from whom the property was seized:

Seizing Officer: _____

REASON OR BASIS FOR SEIZURE: (Check all applicable)

- VEHICLE (or other conveyances) used or intended for use to transport untaxed tobacco product.
 MONEY furnished or intended to be furnished in exchange for untaxed tobacco product or profits and proceeds traceable to such exchange or found in close proximity to a forfeitable tobacco product or a forfeitable record of an importation of a tobacco product, or used to facilitate a criminal violation of the Tobacco Products Tax Act of 1977 or the Unfair Cigarette Sales Act.
 FIREARMS furnished or intended to be furnished in exchange for a tobacco product in violation of the Tobacco Products Tax

Act of 1977 OR explain other basis for seizure (e.g. stolen firearm, felon in possession, etc...): _____

OTHER PROPERTY seized and basis for seizure:

DESCRIPTION AND ESTIMATED VALUE OF PROPERTY SEIZED:

(must contain serial and model numbers, if applicable, must contain odometer or hour meter if vehicle or equipment)

PROPERTY SEIZED WILL BE HELD AT THE FOLLOWING LOCATION(S).

The undersigned officer states that he/she is the "seizing officer" and that this report is true and complete.

officer

Signature of seizing

The undersigned hereby states that he/she is the person(s) from whom the above property was seized and that his/her correct mailing address is given below.

Signature
Printed name & mailing address:

In the event that a party refuses to sign, the following must be completed:

The undersigned additional law enforcement officer hereby states that the party from whom the property was seized refused to sign this report and I hereby place my signature attesting to such refusal.

Signature of
secondary officer

The undersigned agent hereby certifies that he has sent a copy of this report to the Prosecuting Attorney and has obtained and is maintaining a copy of this report that has been acknowledged as being received by: _____ and further certifies that he has sent a copy of the foregoing to the Arkansas Tobacco Control Director on this _____ day of _____, 20_____.

Signature of seizing
officer

The Prosecuting Attorney's Office acknowledges receipt of a copy of the foregoing on this _____ day of _____, 20_____.
(must be signed by the Prosecuting Attorney or deputy prosecuting attorney.)

Signature of PA

FORM ATC-C10 (8/2010)

(c) A report number for each seizure shall be assigned by Arkansas Tobacco Control and recorded on Form ATC-C10 that will be completed by the seizing law enforcement agency.

(d) The report number shall consist of the calendar year, the LEA numeric identifier, and the sequential confiscation number for that calendar year (e.g., 2010001001).

26 CAR § 200-1702. Savings clause.

If any provision of this part should be held invalid for any reason, the remaining provisions of this part shall not be affected thereby and shall remain in full force and effect.

26 CAR § 200-1703. Modification of rules.

This part may be modified or changed from time to time in accordance with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.